

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KATALIN HORVATH,	)	1:05-cv-00041-REC-TAG-HC
	)	
Petitioner,	)	ORDER DENYING MOTION FOR DEFAULT
	)	JUDGMENT (Doc. 24)
v.	)	
	)	ORDER DENYING MOTION FOR DENIAL
	)	OF RESPONDENT'S MOTION FOR
INS,	)	EXTENSION OF TIME (Doc. 25)
	)	
	)	ORDER DENYING MOTION TO REINFORCE
Respondent.	)	ILLEGAL FILING TIMES (Doc. 26)
	)	
	)	ORDER DENYING SECOND MOTION FOR
	)	DEFAULT JUDGMENT (Doc. 29)

Petitioner, currently in the custody of the Bureau of Immigration and Customs Enforcement ("ICE") and proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1).

**DISCUSSION**

On March 29, 2005, the Court issued an Order to Show Cause why the petition should not be granted. (Doc. 18). Respondent was ordered to respond within forty-five days of the date of service of the order, or by May 18, 2005. (*Id.*). On May 14, 2005, well within the time prescribed by the Court, Respondent duly filed a motion for extension of time. (Doc. 22). On May 20, 2005, the Court granted the motion in part, permitting Respondent to answer the Order to Show Cause by June 8, 2005. (Doc. 23).

1 On May 24, 2005, after Respondent's motion had been granted, Petitioner filed a Motion  
2 for Default Judgment (Doc. 24), erroneously contending that Respondent had failed to respond to  
3 the Court's Order to Show Cause. Because Respondent timely requested an extension of time,  
4 Petitioner's Motion for Default Judgment must be denied.

5 Also on May 24, 2005, Petitioner filed a motion requesting denial of Respondent's  
6 motion for an extension of time to respond to the Order to Show Cause. (Doc. 25). Because the  
7 Court had already granted Respondent's request for additional time, Petitioner's motion is denied  
8 as moot.

9 On May 27, 2005, Petitioner file a Motion to Reinforce Illegal Filing Times (Doc. 26), in  
10 which Petitioner alleged that because Respondent filed the request for extension of time on a  
11 Saturday, Petitioner experienced a delay in receiving the document and responding to it.  
12 Petitioner contends that Respondent thereby violated Local Rule 5-135 regarding the service of  
13 documents during an action. Local Rule 5-135, subsections (a) and (b), provide inter alia that  
14 documents "required to be served" must contain a proof of service, and that unless "a party  
15 expressly waives service, all copies of all documents submitted to the Court shall be served upon  
16 all parties to the action...." However, there is nothing to indicate that Respondent failed to serve  
17 Petitioner with the motion for extension of time. To the contrary, Petitioner concedes she  
18 received it. Thus, there has been no violation of Local Rule 5-135. Accordingly, Petitioner's  
19 motion must be denied.

20 Finally, on June 16, 2005, Petitioner filed a second Motion for Default Judgment,  
21 premised on Respondent's failure to meet the June 8, 2005. (Doc. 29). Also on June 16, 2005,  
22 the Court issued an Order to Show Cause regarding the imposition of sanctions for Respondent's  
23 inaction. (Doc. 28). On June 21, 2005, Respondent responded to the Order to Show Cause,  
24 indicating that Respondent's counsel had attempted to file a timely response electronically, but  
25 that the response had not been successful filed. Respondent apologized for the delay and also  
26 filed a notice seeking transfer of the case to the United States Court of Appeals for the Ninth  
27 Circuit pursuant to the Real ID Act of 2005. Contemporaneously with this Order, the Court is  
28 also ordering the parties to file briefs on the issue of transfer pursuant to the Real ID Act of 2005.

1 Accordingly, because Respondent has answered and shown cause why Respondent did not meet  
2 the June 8, 2005 deadline, Petitioner's Motion for Default Judgment is denied.

3 **ORDER**

4 Accordingly, it is HEREBY ORDERED that:

- 5 1. Petitioner's Motion for default judgment (Doc. 24), is DENIED;  
6 2. Petitioner's Motion requesting denial of Respondent's motion for an extension of time  
7 (Doc. 25) is DENIED as MOOT;  
8 3. Petitioner's Motion to reinforce illegal filing times (Doc. 26), is DENIED; and,  
9 4. Petitioner's second Motion for default judgment (Doc. 29), is DENIED.

10  
11 IT IS SO ORDERED.

12 **Dated: June 24, 2005**  
j6eb3d

/s/ Theresa A. Goldner  
UNITED STATES MAGISTRATE JUDGE